

In the United States Court of Federal Claims

No. 05-1119 L

Filed: April 5, 2016

ST. BERNARD PARISH GOVERNMENT
AND OTHER OWNERS OF REAL
PROPERTY IN ST. BERNARD PARISH
OR THE LOWER NINTH WARD OF THE
CITY OF NEW ORLEANS,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

Federal Rules of Evidence
201(b)(2), (c) (Judicial Notice)

MEMORANDUM OPINION AND ORDER REGARDING DECLARATIONS FROM ST. BERNARD PARISH AND THE CITY OF NEW ORLEANS TO VERIFY PROPERTY TAX RECORDS

Before and after the evidentiary hearing on damages in this case, the parties were advised that the tax revenue losses experienced by St. Bernard Parish and the City of New Orleans' Ninth Ward were an element of the just compensation under consideration by the court.¹ On January 8, 2016, the court requested that the parties address whether lost tax revenue may be considered private property within the context of the Takings Clause of the Fifth Amendment to the United States Constitution in supplemental briefing. 1/8/16 TR at 48.

Plaintiffs replied that no “applicable precedent . . . directly addresses that question [however,] relevant Fifth Amendment principles strongly support the proposition that tax revenue does indeed constitute property that may be the subject of a taking.” 1/22/16 Plaintiffs’ Supplemental Class Certification Brief at 31 (citations omitted). The Government did not respond, although on April 27, 2015, the Government filed a Motion To Postpone a May 6, 2015 Settlement Conference, wherein it also opposed the court’s request to review tax records in the document repository maintained by the City of New Orleans. Instead, the Government responded that “[a] more comprehensive and efficient means of obtaining the municipal property tax records . . . would be through the public, online search engines established by both the Orleans and St. Bernard Parish

¹ See, e.g., 1/29/13 TR at 8, 16; 11/18/13 TR at 85–86; ECF No. 270 at 3–6; 4/27/15 TR at 5, 7–8.

governments. Those search engines are available online at <http://nolassessor.com/> (for Orleans Parish) and <http://www.stbassessor.com/> (for St. Bernard Parish).” ECF No. 270 at 5.

Although the Government eventually did comply with the court’s request, the tax records in the repository were incomplete so, in preparing the forthcoming Memorandum Opinion And Order Regarding Just Compensation, the court first consulted the website for St. Bernard Parish, but found that Financial Statements for the years prior to 2008 were archived. *See* http://www.sbp.net/index.php?option=com_content&view=article&id=2301&Itemid=330. Therefore, the court requested whether St. Bernard Parish could provide Statements for 2005–2007 and the requested information was received via e-mail on December 22, 2015² and January 4, 2016.³ Since the Statements were labeled “Ad Valorem Taxes,” the court requested if St. Bernard Parish Assessor’s Office could segregate the “real property” tax billed and paid for the years 2005–2007.⁴

² Email from Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Dec. 22, 2015, 10:17 am) (Court Exhibit A); Email from Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Dec. 22, 2015, 10:20 am) (Court Exhibit B); Email from Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Dec. 22, 2015, 10:21 am) (Court Exhibit C); Email from Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Dec. 22, 2015, 10:26 am) (Court Exhibit D).

³ Email from Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Jan. 4, 2016, 11:06 am) (Court Exhibit E).

⁴ Email from Erika James, Law Clerk to Judge Braden, United State Court of Federal Claims, to Kim Owens, former Executive Assistant to the President of St. Bernard Parish Government (Mar. 21, 2016, 1:48 pm) (Court Exhibit F).

The following chart represents the Land and Improvement Taxes due for St. Bernard Parish and net taxes paid by St. Bernard Parish taxpayers for the years 2004–2007:

Land And Improvement Taxes For St. Bernard Parish		
Year	Taxes Due From Tax Payer	Net Taxes Paid
2004	\$31,458,047.58 ⁵	To Be Provided.
2005	\$23,867,311.61 ⁶	\$23,200,000.00 ⁷
2006	\$24,594,324.78 ⁸	\$24,054,378.55 ⁹
2007	\$25,179,458.54 ¹⁰	\$25,055,113.47 ¹¹

To ascertain the amount of tax revenue losses experienced by the Lower Ninth Ward and St. Bernard Parish, the court next reviewed the 2005–2007 Basic Financial Statements for the City of New Orleans found at: <http://www.nola.gov/accounting/#report>. Since these records did not separately segregate the tax billed or paid for the Lower Ninth Ward, the court contacted the City of New Orleans and requested if it maintained this information.¹²

⁵ E-mail from Jaylynn Bergeron Turner, CLA Assessor, Parish of St. Bernard, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Mar. 29, 2016, 4:10 pm) (Court Exhibit H).

⁶ E-mail from Lenor Duplessis, Administrative Office, St. Bernard Parish Government, to Erika James, Law Clerk to Judge Braden (Mar. 24, 2016, 1:38 pm) (“3/24/16 E-mail from Lenor Duplessis”) (Court Exhibit I).

⁷ Memorandum from Civil Sheriff Jo Ann C. Lane, St. Bernard Parish, to Judge Braden, United States Court of Federal Claims (Mar. 28, 2016, 10:41 am) (“3/28/16 Memo from Sheriff Lane”) (Court Exhibit J).

⁸ 3/24/16 E-mail from Lenor Duplessis (Court Exhibit I).

⁹ 3/28/16 Memo from Sheriff Lane (Court Exhibit J).

¹⁰ 3/24/16 E-mail from Lenor Duplessis (Court Exhibit I).

¹¹ 3/28/16 Memo from Sheriff Lane (Court Exhibit J).

¹² Email from Erika James, Law Clerk to Judge Braden, United State Court of Federal Claims, to Norman S. Foster, Finance Director, City of New Orleans (Mar. 21, 2016, 1:10 pm) (Court Exhibit G).

The following chart represents the Real Estate Taxes billed by the City of New Orleans for the Lower Ninth Ward and collected from Lower Ninth Ward taxpayers for the years 2004–2007:

Real Estate Taxes For The Lower Ninth Ward¹³		
Year	Amount Of “Real Estate” Taxes Billed	Net (Of Refunds) Taxes Paid
2004	To Be Provided.	To Be Provided.
2005	\$2,426,640.89 ¹⁴	\$2,020,953.93
2006	\$ 857,046.78 ¹⁵	\$ 686,981.67
2007	\$1,008,997.40	\$ 785,840.50

It is well-established that a trial court may take judicial notice of adjudicated facts that can be accurately and readily determined from “sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b)(2), (c); *see also Rothe Dev. Corp v. Dep’t of Def.*, 545 F.3d 1023, 1045–46 (Fed. Cir. 2008) (taking judicial notice of facts derived from official publications of the United States Geological Survey and the United States Census Bureau). Nevertheless, the court requests that an appropriate official from New Orleans and an appropriate official from St. Bernard Parish each submit a declaration to the court on or before April 20, 2016 verifying that the tax revenue information reflected in the charts presented herein is accurate, including information to be provided, or make any necessary corrections.

Since the court’s forthcoming Memorandum Opinion and Order Regarding Just Compensation will not enter a final money judgement for Class Plaintiffs, necessarily the record must remain open until final calculations are made. Therefore, the parties will have an opportunity

¹³ Email from Walter J. O’Brien, Finance Operations Manager, City of New Orleans, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Mar. 24, 2016, 5:06 pm) (Court Exhibit K).

¹⁴ “Real estate property taxes were assessed in January 2005 and a majority was collected in the first half of the year.” City of New Orleans, Louisiana, Basic Financial Statements 7 (2005), <http://www.nola.gov/accounting/#report>.

¹⁵ “Real estate property taxes were assessed and the majority collected in the middle part of the fiscal year.” City of New Orleans, Louisiana, Basic Financial Statements 7 (2006), <http://www.nola.gov/accounting/#report>.

In an email to the court dated March 29, 2016, Walter J. O’Brien, Finance Operations Manager, City of New Orleans, indicated that the significant decrease in real estate taxes assessed between 2005 and 2006 “was the effect of reductions in assessment values, and taxes, recognized after the destruction from the flooding of August 29, 2005.” E-mail from Walter J. O’Brien, Finance Operations Manager, City of New Orleans, to Erika James, Law Clerk to Judge Braden, United States Court of Federal Claims (Mar. 29, 2016, 1:28 pm) (Court Exhibit L).

to depose the declarants and submit further argument, if the parties elect to do so. Accordingly, the Government's March 30, 2016 Objection is overruled and moot.

IT IS SO ORDERED.

s/ Susan G. Braden
SUSAN G. BRADEN
Judge